

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Gary Howard Moore,)
)
Plaintiff,) **ORDER ADOPTING**
) **REPORT AND RECOMMENDATION**
vs.)
)
Warden Timothy Schuetzle,) Case No. 1:07-cv-036
)
Defendant.)

On May 14, 2007, the petitioner, Gary Howard Moore, filed this petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. The Court ordered the Defendant to file a response. On July 9, 2007, the Defendant filed an answer and a motion to dismiss the petition. Magistrate Judge Charles S. Miller, Jr. reviewed Moore's petition and the pleadings and submitted a Report and Recommendation. On August 31, 2007, Judge Miller recommended that the Defendant's motion to dismiss be granted and that Moore's petition be denied. Moore was given ten (10) days to file an objection to the Report and Recommendation. No objection was filed.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 8) in its entirety and **GRANTS** the Defendant's motion to dismiss (Docket No. 5) and **DISMISSES** Moore's Petition Under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody (Docket No. 1). The Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. The Court further certifies that Moore has failed to make a substantial showing of the denial of a constitutional right and will not grant a certificate of appealability.

IT IS SO ORDERED.

Dated this 21st day of September, 2007.

/s/ *Daniel L. Hovland*

Daniel L. Hovland, Chief Judge
United States District Court